

A Lo Nyuk Lin v Susanna Marjoribanks

HIGH COURT (KUCHING) — ORIGINATING SUMMONS NO 24-257 OF
1998-II

MUHAMMAD KAMIL J

6 JANUARY 1999

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Land Law — Restraints on dealings — Caveats — Application to extend period of caveat — Whether equitable interest arose from financing of loans for purchase of lands — Whether close familial relationship arising from cohabitation dictated balance of convenience to continue caveat — Whether caveator has caveatable interest — Sarawak Land Code (Cap 81) s 178

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The applicant lodged two caveats over two pieces of lands ('the lands') and applied for an extension of the caveats over the lands which were owned by an owner who had died. The respondent, who was the administrator of the deceased estate, opposed the application. The applicant sought to show that she had an equitable interest in the lands as she had paid a certain sum of money to the deceased for the servicing of the loan for the houses which was built on the lands. She also contended that the deceased had cohabited with her for a certain period till the time of the death of the deceased and further, the deceased personal effects and documents were kept in the applicant's custody. Further, she contended that the deceased had a common intention to purchase the lands as their matrimonial home. The issue was whether the applicant had a caveatable interest to maintain the caveats.

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Held, allowing the application:

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(1) The applicant had clearly demonstrated that there was a serious question to be tried as the applicant has showed that she had an equitable interest in the lands by her contributions to the loans financing the purchase of the lands, thereby having a caveatable interest in the land (see p 344A-B); *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212 and *Hj Khalid bin Abdulah v Khalid bin Abg Hj Marzuki & Anor* Kuching Originating Motion No KG 3 of 1983 followed.

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(2) The close familial relationship between the applicant and the deceased were sufficient grounds to satisfy the court that there were triable issues based on the allegations of trust that could only be decided at a trial. The balance of convenience dictates that a caveat should continue in such circumstances because if the caveats were lifted, the property could be sold (see p 345A-C); *Guan Wee Keang v Gan Ah Ter* [1986] 1 CLJ 557 followed.

H**I**

Further, where a couple chose to set up a home together notwithstanding that the house was purchased in the name of one of the parties, equity will infer that both parties should have a beneficial interest in the property and that the non-proprietary owner had acted to his or her detriment upon that intention. On

the facts, the appellant had led evidence to prove so (see p 345E-H); *Grant v Edwards & Anor* [1986] 1 Ch 638 followed.

[Bahasa Malaysia summary]

Pemohon memasukkan dua kaveat-kaveat ke atas dua bidang tanah ('tanah-tanah tersebut') dan memohon untuk melanjutkan kaveat-kaveat tersebut ke atas tanah-tanah tersebut yang dimiliki oleh seorang tuan punya yang telah meninggal dunia. Responden, yang merupakan pentadbir harta pusaka si mati, menentang permohonan tersebut. Pemohon mencuba untuk menunjukkan bahawa beliau mempunyai kepentingan ekuiti di dalam tanah-tanah tersebut memandangkan beliau telah membayar sejumlah wang yang tertentu kepada si mati untuk membayar pinjaman untuk rumah-rumah yang dibina di atas tanah-tanah tersebut. Beliau juga menegaskan bahawa si mati telah bersekedudukan dengan beliau untuk suatu tempoh yang tertentu sehingga masa kematian si mati dan tambahan lagi, barang-barang peribadi dan dokumen-dokumen si mati adalah disimpan di dalam jagaan pemohon. Tambahan lagi, beliau menegaskan bahawa si mati berkongsi niat bersama untuk membeli tanah-tanah tersebut sebagai kediaman suami isteri. Isu adalah sama ada pemohon mempunyai kepentingan yang boleh dikaveatkan untuk mengekalkan kaveat-kaveat tersebut.

Diputuskan, membenarkan permohonan:

- (1) Pemohon telah dengan jelasnya membuktikan bahawa terdapatnya suatu persoalan serius untuk dibicarakan memandangkan pemohon telah menunjukkan bahawa beliau mempunyai suatu kepentingan ekuiti di dalam tanah-tanah tersebut melalui sumbangan-sumbangan beliau kepada pinjaman-pinjaman yang membiayai pembelian tanah-tanah tersebut (lihat ms 344A-B); *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 2121 dan *Hj Khalid bin Abdulah v Khalid bin Abg Hj Marzuki & Anor* Kuching Originating Motion No KG 3 of 1983 diikuti.
- (2) Hubungan kekeluargaan rapat di antara pemohon dan si mati adalah alasan-alasan yang cukup untuk menyakinkan mahkamah bahawa terdapatnya isu-isu untuk dibicarakan berdasarkan pengataan-pengataan amanah yang hanya boleh diputuskan pada suatu perbicaraan. Imbangan kesenangan menetapkan bahawa suatu kaveat seharusnya berterusan di dalam keadaan-keadaan sedemikian sebagaimana, jika kaveat tersebut ditarik, harta tersebut boleh dijual (lihat ms 345A-C); *Guan Wee Keang v Gan Ah Ter* [1986] 1 CLJ 557 diikuti.

Tambahan lagi, apabila sepasangan memilih untuk mendirikan sebuah rumah bersama walaupun rumah tersebut adalah dibeli di atas nama salah satu daripada pihak-pihak, ekuiti akan infer bahawa kedua-dua pihak-pihak seharusnya

- A mempunyai kepentingan benefisial di dalam harta tersebut dan bahawa pemunya bukan tuan punya telah bertindak menjejaskan kedudukan beliau atas niat tersebut. Atas fakta-fakta, pemohon telah memberikan keterangan untuk membuktikan sedemikian (lihat ms 345E-H); *Grant v Edwards & Anor* [1986] 1 Ch 638 diikut.]
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Notes

For cases on application to extend period of caveat, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 2674–2680.

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Cases referred to

- Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 (folld)
Grant v Edwards & Anor [1986] 1 Ch 638 (folld)
Guan Wee Keang v Gan Ah Ter (the Personal Representative of the deceased) [1986] 1 CLJ 557 (folld)
D *Hj Khalid bin Abdulah v Khalid bin Abg Hj Marzuki & Anor* Kuching Originating Motion No KG 3 of 1983 (folld)
Lee Chiu Hing v Loh Hua Ing Kuching Originating Motion No K7 of 1979 (refd)
Soh Li Ke v Lim Ah Chaw [1985] 1 CLJ 466 (refd)
E *Tan Suan Heoh v Lim Teck Ming & Ors* [1987] 2 MLJ 466 (refd)

Legislation referred to

- Evidence Act 1950 s 114(g)
National Land Code 1965 s 327
F Sarawak Land Code (Cap 81) s 178

Fabian Lim & Lim Heng Choo (Lim & Lim) for the applicant.
Aryati Zainudin (Arthur Lee, Lin & Co) for the respondent.

Muhammad Kamil J: The applicant ('the caveator') had lodged two caveats No L21238/1997 and L21331/1997 at Kuching Land Registry Office on 6 September 1997 and at Samarahan Land Registry Office on 8 September 1997 respectively, affecting two parcels of lands ('the said land') registered in the name of Harmony Harmon @ Wong Jan Heng, deceased. This is an application (encl 3) of the caveator under s 178 of the Sarawak Land Code for the extension of the caveats.

- H The application is supported by three affidavits of the caveator affirmed on 15 September 1998, 27 October 1998 and 2 November 1998; supplementary affidavits of Luk Tien Wei and of Philomena Anak Aten, both affirmed on 27 October 1998. In opposing the application, the widow of the deceased proprietor ('the respondent') as administratrix of the deceased's estate, had filed four affidavits; two of the affidavits of the respondent affirmed on 16 October 1998 and 13 November 1998 respectively; one of Mark Wong Kwok King and of Fiona Wong Lai Maan, both affirmed on 3 November 1998.
- I

The question for the determination of the court is whether the applicant has a caveatable interest in order to maintain the caveats.

The applicant had clearly demonstrated by affidavit evidence that her claims to an interest in the said land, had raised serious questions to be tried. Documentary evidence shows that the applicant has a beneficial interest in the said land as she had contributed to the purchase price of the said land.

It was shown that the applicant had drawn a cheque from her account at Hock Hua Bank Bhd, Limbang, for a sum of RM42,000, which was paid to the deceased, who endorsed on the back of the cheque (exh LNL-H) and the amount was used to pay the deposit for the house in Kuching in relation to the said land in the first caveat. The servicing of the loan taken out for the house had been the responsibility of the applicant as shown by the payment slip (exh LNL-K).

Similarly, a cash cheque for a sum of RM24,000 was received and endorsed by the deceased (exh LNL-E) for the same purpose. The applicant had evidently proved to the satisfaction of the court that she had contributed towards the purchase of the said land. This gives her an equitable interest in the said land. Under the Sarawak Land Code (Cap 81), a person who has an equitable interest in a piece of land, has a caveatable interest in the land. In the case of *Hj Khalid bin Abdullah v Khalid bin Abg Hj Marzuki & Anor* (Kuching Originating Motion No KG 3 of 1983 (unreported)), a case under the same Land Code, Tan Chaw Thong J said:

I am of the view and I hold that in the circumstances, the parties shall have the fullest opportunity to litigate matters in dispute between them. The caveat will be extended conditional upon the applicant instituting action against the registered proprietor and the respondents within two weeks failing which the application shall be dismissed with costs.

In another case of *Lee Chiu Hing v Loh Hua Ing @ Loh Kiu Ing* (Kuching Originating Motion No K7 of 1979), the wife lodged a caveat claiming a beneficial interest in the property on the ground that she had contributed towards the purchase price. The bank in the meantime took out an originating summons against the husband for an order of the sale of the property.

His Lordship George Seah J (as he then was) ordered the caveat to be removed, nevertheless ordered that the proceeds of sale to be deposited into court to await the outcome of the claim to be filed by the wife. See also *Soh Li Ke v Lim Ah Chaw* [1985] 1 CLJ 466.

From the affidavit evidence, it is clear that the applicant had cohabited with the deceased during his life as his mistress, from 1993 to the time of his death on 4 August 1997. Philomena Anak Aten, a next door neighbour, had in her affidavit testified that the applicant and the deceased had lived together. Further, Luk Tien Wei (the deceased's remiser) stated that the deceased had introduced the applicant as his wife. The deceased's two shares accounts operated under the address where the couple was cohabiting.

A Further, the deceased's personal effects and documents were kept in the applicant's custody since early 1993. The deceased's Income Tax Form J were kept at the same address. The close familial relationship between the applicant and the deceased are sufficient grounds to satisfy the court that there are triable issues where there was an allegation of trust. In *Guan Wee Keang v Gan Ah Ter (the Personal Representative of the deceased)* [1986] 1 CLJ 557, his Lordship LC Vohrah J held that having regard to the close familial relationship of the parties in this case, there are sufficient grounds to satisfy the court that there are triable issues which can only be decided at the trial. Having regard to the fact that the substratum of the suit would disappear if the caveat were lifted and the property sold, the balance of convenience dictates that the caveat should continue.

C From the evidence, it was shown that the deceased was not in any financial position to pay for the deposit and service of the loan repayment of the house in Kuching and also to pay fully for the deceased's $\frac{3}{22}$ share in the said land. The deceased was, at the material time, a police officer earning about RM3,000–4,000 per month (exh HW1, HW2 and HW3). Besides, he had to maintain his wife and children, leaving him with less cash. There was evidence by a letter of his sister (exh LNL-J) that he still owed the brother-in-law in Singapore some money. It appears that at the time of the acquisition of the said land, the deceased was in no financial position to provide the deposit and loan repayment in respect of the said land. See *Guan Wee Keang's* case and *Soh Li Ke's* case.

E Moreover, the applicant and the deceased shared a common intention to purchase the said land as a matrimonial home. They bought these properties when they were cohabiting since 1993. The Kuala Lumpur apartment and the said house were bought in 1994 and the said land in 1995. The applicant had acted to her detriment on the basis of common intention. Strangely, the respondent had shown no evidence that she knew of the purchase of the said land, and in fact was unaware of the existence of the said land until after his death.

F In *Grant v Edwards & Anor* [1986] 1 Ch 638, the Court of Appeal held that where a couple chose to set up home together and a house was purchased in the name of one of the parties, equity will infer a trust if there was a common intention that both should have a beneficial interest in the property and the non-proprietory owner had acted to his or her detriment upon that intention; that there had to be conduct from which the common intention could be inferred and conduct on the part of the non-proprietory owner; either directly or indirectly referable to the purchase of the property, that could only be explained by reference to a person acting on the basis of having a beneficial interest in the property.

G The dispute of facts and law relating to the applicant's claims on the said land cannot be determined by affidavit evidence, it must go to trial. See *Tan Suan Heoh v Lim Teck Ming & Ors* [1987] 2 MLJ 466. In *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212, Lord Diplock in his advice when speaking about the nature of the onus that lies with the caveator in an application by the caveatee under s 327 of the National Land Code 1965 for removal of caveat, said:

... he must first satisfy the court that on the evidence presented to it, his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that on the balance of convenience, it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

Thus, in the instant case, on the balance of convenience, it would be better to maintain the status quo until trial of the action, and in the interest of justice to the case, the caveat should be maintained. I would, therefore, allow the application.

Application allowed.

Reported by Chin En Tek

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